

Exhibit A

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4
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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7 BROWN, ET AL.,

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Plaintiffs,

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v.

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GOOGLE, LLC,

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Defendant.

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13 Defendant Google, LLC seeks to stay proceedings in this Court pending the Ninth Circuit's
14 resolution of this Court's order denying a motion to intervene. Having carefully considered the
15 papers submitted and the pleadings in this action, and for the reasons set forth below, the motion is
16 **GRANTED.**¹

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I. BACKGROUND

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19 The Court recounts only those facts pertinent to the instant motion. Plaintiffs filed this
20 action in June 2020, alleging defendant's surreptitious collection of user data "***no matter what***
21 safeguards consumers undertake to protect their data privacy."

22 (Dkt. No. 1 at 2 (emphasis in original).) The Court granted in part plaintiffs' motion for class certification in December 2022,
23 allowing the action to proceed only under Rule 23(b)(2), and denying plaintiffs' motion to certify a
24 Rule 23(b)(3) damages class. (Dkt. No. 803). The parties reached a settlement and moved for final
25 approval and attorneys' fees in April 2024. (See Dkt. Nos. 1093, 1096, 1107). That settlement
26 included provisions in which the five named plaintiffs waived their rights to appeal the Court's
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¹ Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds this motion appropriate for decision without oral argument.

1 denial of a damages class and agreed to arbitrate their own damages claims. The settlement was
2 also governed in part by a tolling agreement the parties had jointly executed earlier in the action.

3 Just over one month before the hearing on the motions for settlement approval and
4 attorneys' fees, would-be intervenors ("the Salcido plaintiffs") filed a motion to intervene. (Dkt.
5 No. 1116, Motion to Intervene.) That group was comprised of 185 state-court plaintiffs currently
6 seeking damages on grounds largely identical to those in this action. The intervention motion took
7 no issue with the substance of the injunctive relief negotiated by the parties, but claimed the
8 settlement was unfair in its disparate treatment of the named class representatives and the Salcido
9 plaintiffs. More specifically, the Salcido plaintiffs alleged the following:

- 10 • First, whereas named class members could arbitrate their damages claims using
11 procedures enumerated in the settlement agreement, the Salcido plaintiffs "must
12 individually file actions in state court, paying costs and fees, prove up their case
13 using evidence either adduced during that litigation or obtained by way of this
14 motion, present liability and damages evidence to the trier of fact, subject to
15 Google's complete line of defenses, which judgment would then be appealable
16 by Google when Moving Parties were found successful at trial." (*Id.* at 11.)
- 17 • Second, the Salcido plaintiffs "cannot rely on class counsel or class
18 representatives to adequately protect their individual interests in pursuing
19 damages claims in that they prepared the agreement that benefits Plaintiffs over
20 most absent class members. Moving Parties have no expectation that class
21 counsel will pursue damages remedies on their behalf. Indeed, counsel for
22 Moving Parties sought information regarding the tolling agreement, class
23 counsel refused to provide a copy or any information regarding the negotiations
24 leading to the agreement." (*Id.*)²

25 The Court took argument on the intervention motion and issued a denial, which the Salcido
26 plaintiffs appealed. That appeal is now pending before the Ninth Circuit. Google thus moves for a

27 ² In opposition to the instant motion, plaintiffs clarify that would-be intervenors received a
28 copy of the tolling agreement in between the filing of their initial motion to intervene and the filing
of their reply.

1 stay of proceedings in this Court, arguing that the pending appeal divested this Court of jurisdiction
 2 over the case.

3 **II. LEGAL STANDARD**

4 Under *Griggs v. Provident Consumer Disc. Co.*, “[t]he filing of a notice of appeal is an
 5 event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the
 6 district court of its control *over those aspects of the case involved in the appeal.*” 459 U.S. 56, 58
 7 (1982) (emphasis supplied).

8 **III. ANALYSIS**

9 As per *Griggs*, the operative question thus becomes whether there are “aspects of the case
 10 involved in the appeal” intertwined with the Court’s consideration of the motions pending before it.
 11 (*Id.*) The Court finds there are.

12 The Salcido plaintiffs identify in their motion several aspects of the proposed settlement that
 13 they feel treat named class members preferentially. Success at the Court of Appeals would possibly
 14 require redrafting of those provisions. Indeed, both the initial intervention motion and a
 15 subsequently filed motion for reconsideration invoke terms found in the agreement itself as a basis
 16 for objecting to the Court’s approval of the agreement.

17 Nor do plaintiffs’ arguments to the contrary persuade. First, plaintiffs argue that the Salcido
 18 plaintiffs do not actually oppose the settlement agreement, but rather ultimately just oppose the
 19 Court’s class certification ruling. Second, plaintiffs aver that because the text of the proposed
 20 settlement “places no restrictions on the ability of any [non-named plaintiff] to seek leave from this
 21 Court to appeal the denial of Rule 23(b)(3) certification,” the intervention motion currently on
 22 appeal does not implicate the Court’s analysis of the motion to approve it. (Dkt. No. 1149 at 3.)
 23 They also point to an admission from Google’s counsel that the agreement did not (because it could
 24 not) waive any non-named plaintiff’s right to appeal rulings from this Court. Third, plaintiffs
 25 support their position by noting that the Salcido plaintiffs agreed they take no issue with the
 26 injunctive relief negotiated as part of the settlement.

27 The arguments are misplaced. The Salcido plaintiffs do ultimately oppose the settlement, as
 28 evidenced by the myriad provisions contained within it identified in their moving papers. That their

1 primary objection to the agreement (concerning damages) is different than the parties' primary
 2 purpose in drafting it (injunctive relief) does not mean the disagreement does not implicate the
 3 settlement at all. Nor do the statements collected from Google and the Salcido plaintiffs change the
 4 fundamental fact that the intervention motion sought to delay this Court's approval of the
 5 agreement.

6 Second, plaintiffs argue that the Court has discretion whether to issue a stay or not, and that
 7 a stay is unwarranted. The Court disagrees. *Griggs* is jurisdictional and thus any action taken by the
 8 Court during the pendency of this appeal would be null and void. *See Kusay v. United States*, 62
 9 F.3d 192 (7th Cir. 1995).

10 In sum, this Court is under a duty to faithfully consider whether the appeal currently filed
 11 divests it of jurisdiction to proceed with the motions pending before it. Because the Salcido
 12 plaintiffs object to the very settlement plaintiffs want the Court to approve, the Court concludes it
 13 does.

14 **IV. CONCLUSION**

15 For the reasons stated above, the Court finds it is without jurisdiction to resolve the motions
 16 pending before it in this matter prior to a mandate from the Court of Appeals. Defendant's motion
 17 to stay is **GRANTED**.

18 This terminates Docket No. 1148.

19 **IT IS SO ORDERED.**

20 Date: November 8, 2024


 21 YVONNE GONZALEZ ROGERS
 22 UNITED STATES DISTRICT COURT JUDGE

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